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March 2, 2005

VIA ELECTRONIC SUBMISSION

Ms. Marlene H. Dortch
Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **Memorandum of Ex Parte Presentation**
CC Docket 95-20, CC Docket No. 98-10, Petition for Declaratory Ruling or
Waiver of OSS Same Access Requirement in the matter of Computer III
Further Remand Proceedings: Bell Operating Company Provision of
Enhanced Services; 1998 Biennial Regulatory Review- Review of Computer
II and ONA Safeguards and Requirements

Dear Ms. Dortch:

On March 1, 2005, Brent Olson, Michelle Thomas, Keith Epstein, Clarissa Benavides-Velasquez and the undersigned represented SBC at a meeting relating to the above-referenced proceeding that was scheduled at the request of EarthLink with the Investigation and Hearings Division of the Enforcement Bureau. Representing the Enforcement Bureau at the FCC were Hillary DeNigro, Trent Harkrader, Raelynn Tibayan-Remy, Lisa Griffin, AJ DeLaurentis, and Jodie Donovan-May. Also present was Ann Stevens from the Competition Policy Division of the Wireline Competition Bureau. Three representatives of Earthlink were also present.

During the meeting, SBC reiterated its position that ASI is not subject to the CI-III requirements. SBC argued, further, that, even if ASI were subject to CI-III, ASI committed no CI-III violation because the same access requirement was, by its own terms, an interim requirement that has been superseded by subsequent law. In that regard, SBC noted that the same access requirement was established as a placeholder because the Commission did not have enough information at the time to decide if "interconnection through a gateway provides comparably efficient interconnection."¹ Indeed, the Commission noted that the BOCs themselves had acknowledged "that it is too early in the development of OSS gateway capability for them to establish comparability."² The Commission thus required

¹ Memorandum Opinion and Order on Reconsideration, *Filing and Review of Open Network Architecture Plans*, 8 FCC Rcd 97, para. 4 (1993)

² *Id.*

the same access but *only “until the BOCs can demonstrate that indirect and direct access to [OSS] are comparably efficient.”*³ The BOCs already have established that gateway access is comparably efficient to direct access. Indeed, in each and every section 271 authorization order, the Commission held that gateway access met the strict nondiscrimination standard of section 251. EarthLink is thus arguing that the more lenient CEI nondiscrimination standard (which was adopted pursuant to section 202 of the Act) requires *more* than the stricter section 251 standard – an argument that is facially specious. In any event, even if the Commission has not *already* made clear that the same access is no longer required, it has undeniably held that BOCs may demonstrate in a CEI plan that mediated access is comparably efficient to direct access: “BOCs may demonstrate comparability *on a service-specific* basis, consistent with CEI standards, at a later date.”⁴ Given that CEI plans are service-specific plans that demonstrate compliance with CEI standards, this holding by the Commission unquestionably refutes EarthLink’s contention that the same access requirement can only be lifted via a waiver or rule change.

Pursuant to Section 1.1206(b) of the Commission's rules, this letter is being filed electronically. I ask that this letter be placed in the record for the above referenced proceedings.

Please contact me at 202-326-8910 should you have any questions.

Sincerely,

/s/ Gary L. Phillips

cc: Ann Stevens
Christi Shewman

³ *Id.* (emphasis added).

⁴ *Id.*